

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MORALES-
HOPKINS/HOPKINS, Minors.

UNPUBLISHED
December 10, 2013

No. 314888
Calhoun Circuit Court
Family Division
LC No. 11-002063-NA

Before: MURPHY, C.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

Respondent-mother appeals as of right the order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

The trial court removed the children from respondent's care in July of 2011 due to respondent's marijuana use and lack of suitable housing. The court ordered respondent to comply with multiple service referrals, including referrals for substance abuse treatment and random drug screens. At the July 25, 2012, permanency planning hearing, the trial court found that respondent had not complied with, or benefitted from, her case service plan and ordered that the case proceed to termination. After a January 29, 2013, hearing, the trial court terminated respondent's parental rights to the children.

"This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.*

Respondent's substance abuse was a condition that led to the children's adjudication and, at the time of termination, 182 or more days had "elapsed since the issuance of an initial dispositional order." MCL 712A.19b(3)(c)(i). Respondent admitted to a longstanding history of marijuana use and acknowledged that her marijuana use could be harmful to her children. However, she took no steps to successfully address the issue. From the outset of the case, respondent was required to comply with random drug screens and referrals for substance abuse treatment. The record reveals that respondent missed more than two-thirds of her drug screens throughout the case and that she tested positive for marijuana multiple times during the case, including on December 27, 2012, January 9, 2013, and January 15, 2013. She also failed to comply with her substance abuse treatment referrals. At the termination hearing, the

caseworkers testified that respondent had not addressed her substance abuse issue during the course of the case and that this issue still existed at the time of termination.

On the record before us, the trial court's finding that respondent had not rectified the conditions that led to adjudication and there was no reasonable likelihood that she would do so within a reasonable time, MCL 712A.19b(3)(c)(i), does not leave us with "a definite and firm conviction that a mistake has been made." *In re Hudson*, 294 Mich App at 264. See *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009) (termination was proper under MCL 712A.19b(3)(c)(i) where "[t]he conditions that led to . . . adjudication . . . involved respondent mother's longstanding drug addiction [and] persistent inability to complete a drug treatment program" and "the totality of the evidence" supported that "she had not accomplished any meaningful change in the conditions"); *In re LE*, 278 Mich App 1, 27; 747 NW2d 883 (2008) (the trial court did not clearly err in finding the conditions that led to the initial adjudication continued to exist where the record indicated that the respondent did not comply with services aimed at addressing the conditions that led to adjudication).

Having concluded that the trial court did not clearly err by finding a statutory ground for termination under MCL 712A.19b(3)(c)(i), we do not need to address the trial court's additional grounds for termination. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). Nevertheless, we have reviewed those grounds and conclude that the record supported the trial court's finding that MCL 712A.19b(3)(g) (failure to provide proper care and custody) and (j) (child will be harmed if returned to parent) constituted additional grounds for termination.

Furthermore, the trial court did not clearly err by determining that termination of respondent's parental rights was in the children's best interests. At the time of termination, the case had been pending for approximately 18 months and the children had been in foster care during this period of time. Respondent failed to comply with services or demonstrate substantial progress during the case. The children's caseworkers testified, and the trial court found, that the children were both young and in need of permanency and stability. The caseworkers testified that the children were thriving in their pre-adoptive foster home and were bonded to their foster parents. Accordingly, the trial court's best interest determination does not leave us "with a definite and firm conviction that a mistake has been made." *In re Hudson*, 294 Mich App at 264. See *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011) (holding that "[t]he evidence clearly supported the trial court's finding that termination was in the children's best interests" where "[t]he children had been placed in a stable home where they were thriving and progressing and that could provide them continued stability and permanency given the foster parents' desire to adopt them"); *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004).

Respondent also argues that the trial court violated her right to an attorney when the court did not appoint substitute counsel for respondent at the July 25, 2012, permanency planning hearing. "Unpreserved constitutional challenges are reviewed for plain error affecting substantial rights." *People v Carines*, 460 Mich 750, 763-764, 597 NW2d 130 (1999). Under the plain error rule, a respondent must show that an obvious error occurred and "that the error affected the outcome of the lower court proceedings." *Carines*, 460 Mich at 763.

Although the constitutional provisions explicitly guaranteeing the right to counsel apply only in criminal proceedings, the right to due process also indirectly guarantees assistance of

counsel in child protective proceedings.” *In re CR*, 250 Mich App 185, 197; 646 NW2d 506 (2002). However, a respondent “is not entitled to have the attorney of [her] choice appointed simply by requesting that the attorney originally appointed be replaced.” *People v Buie (On Remand)*, 298 Mich App 50, 67; 825 NW2d 361 (2012) (quotation omitted). Rather, appointment of substitute counsel in a termination case is “warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial proceedings.” *In re Conley*, 216 Mich App 41, 46; 549 NW2d 353 (1996). “A mere allegation that a defendant lacks confidence in his or her attorney, unsupported by a substantial reason, does not amount to adequate cause. Likewise, a defendant’s general unhappiness with counsel’s representation is insufficient.” *People v Strickland*, 293 Mich App 393, 398; 810 NW2d 660 (2011).

Here, the trial court appointed counsel for respondent in July of 2011. In June of 2012, respondent submitted a written request for the appointment of substitute counsel. The trial court heard respondent’s oral argument on the matter at the subsequent July 25, 2012, permanency planning hearing. Respondent testified that she wanted new counsel because her appointed counsel was not contacting her frequently enough with updates regarding the status of her children. The trial court noted that respondent was not entitled to the attorney of her choice, and concluded that respondent’s appointed counsel had “conducted his duties according to what the Court would expect” and that there was no “breakdown in this situation to the point that the parties were not going to be able to communicate” and counsel would not be able to represent respondent’s interests. The trial court informed respondent that it would not appoint substitute counsel at that time and that she could either proceed with her appointed counsel or she could represent herself for the remainder of the hearing. Respondent chose to represent herself for the remainder of the hearing, thereby waiving her right to counsel at the hearing. See *In re Hall*, 188 Mich App 217, 222; 469 NW2d 56 (1991), citing MCR 5.915(B)(1)(c) [now MCR 3.915(B)(1)(c)]. After the hearing, respondent was appointed new counsel that represented her for the remainder of the proceedings.

Respondent does not provide any authority supporting a finding that “good cause” for the appointment of substitute counsel existed at the permanency planning hearing or that the trial court plainly erred by not finding such good cause. *In re Conley*, 216 Mich App at 46. Moreover, even assuming the trial court plainly erred by not appointing substitute counsel for the permanency planning hearing, respondent has not demonstrated “that the error affected the outcome of the lower court proceedings.” *Carines*, 460 Mich at 763. Respondent provides no argument establishing a factual basis to support that the outcome of the lower court proceeding would have been different had respondent been represented by substitute counsel at the July 25, 2012, permanency planning hearing. *Prins v Mich State Police*, 299 Mich App 634, 649; 831 NW2d 867 (2013) (“Plaintiff may not merely announce her position and leave it to this Court to discover and rationalize the factual basis for her claims; plaintiff has abandoned this issue, and we decline to address it.”). Respondent does not suggest what possible evidence or argument substitute counsel could have made at the permanency planning hearing to counteract petitioner’s evidence that respondent had not complied with, or benefitted from, services. Accordingly, we

conclude that respondent has not shown that any error in denying her substitute counsel at the permanency planning hearing “affected the outcome of the lower court proceedings.” *Carines*, 460 Mich at 763.

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello